

**M e m o r a n d u m**

To : Mr. Monte Williams  
Chief, Excise Taxes Division (MIC:56)

From : M. Judith Nelson  
Senior Tax Counsel *M. Judith Nelson*

Subject: **Collection of 911 Surcharge by Cellular Telephone  
Company Service Supplier--Roamer Charges**

Date: June 3, 1998

I. Introduction and Background. This memorandum addresses the application of the Emergency Telephone Users Surcharge (the 911 Surcharge or surcharge) to cellular telephone service roamer charges. In particular, this memorandum discusses the effect of recently adopted regulations on the identification of which service supplier must collect and remit the 911 Surcharge.

A. Board Interpretation in Effect July 1, 1991. From July 1, 1991 until sometime in 1996, the Board interpreted Revenue and Taxation Code Section 41021 very narrowly to require that the service supplier that *physically bills* the customer collect the surcharge from the customer and pay it to the Board, whether or not that person is acting in the capacity of billing agent for another service supplier.

B. Reconsideration of Board Interpretation and Adoption of Regulations. In the second half of 1996, the Board reconsidered its interpretation of the language of Revenue and Taxation Code Section 41021 finding that if the person who physically sent the bill to the customer did so in the capacity as *billing agent* for another service supplier, then the service supplier on whose behalf the billing agent sent the bill, not the billing agent, would be liable for collecting the surcharge.

C. Addition of Definition of "Billing Agent". In light of the change in interpretation of Revenue and Taxation Code Section 41021, on April 1, 1997, the Board amended Regulation 2401 which defines "service supplier" as "any person supplying intrastate telephone communication services to any service user in this state" to also define "billing agent" and specifically provide that a "billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person". The regulation provided for a delayed effective date of October 1, 1997 to give service suppliers time to implement new billing procedures. While the regulation took effect October 1, 1997, at the request of cellular carriers, the Board extended until January 1, 1998, the date by which the cellular carriers were required to switch their 911 Surcharge reporting from roamer in-collect

(116)

revenue to roamer out-collect revenue. That date was subsequently informally extended to February 1, 1998.

D. Liability for Surcharge Billed Through Billing Agents. Regulation 2406 which also was added April 1, 1997 with a delayed effective date of October 1, 1997, states that the service supplier which provided the service must remit the surcharge, and also specifically provides that a service supplier acting as a billing agent is not liable for remitting the surcharge. As previously noted, the Board extended to February 1, 1998, the date by which cellular carriers were required to collect the 911 Surcharge on roamer out-collect revenues.

II. Issue. The issue raised by Mr.

, in a letter dated , 1993, is whether under recently adopted regulations a cellular telephone carrier must collect the surcharge on the basis of roamer in-collect or roamer out-collect revenues. (Mr. is a representative of several cellular telephone and other telecommunications carriers doing business in California.) Specifically, we have been asked to address how Regulation 2406 and the Board's audit procedures will be applied if the home carrier is found to be acting as a reseller of the host carrier's services instead of as a billing agent for the host carrier.

III. Discussion and Analysis. The Emergency Telephone Users Surcharge Law at Revenue and Taxation Code Section 41020 imposes a tax on amounts paid by every person in the state for intrastate telephone communication services in California. While the surcharge is actually imposed on the service user, pursuant to Revenue and Taxation Code Section 41021, it is the service supplier that has the obligation to collect the surcharge from each service user at the time it collects its billings from the service user and to pay the amount collected to the Board. The practical problem is identifying which service supplier is obligated to collect the surcharge and pay it to the Board.

A. Cellular Telephone Service. The Federal Communications Commission (FCC) regulates the cellular telephone business pursuant to the Communication Act of 1934. Each Metropolitan Statistical Area (MSA) in the United States has been designated as a separate cellular market by the FCC. Each cellular system in a given MSA operates independently from the others (e.g. is a separate service supplier). Calls from a cell phone involve a radio transmission between a mobile telephone and a nearby cell site, the transmission of the call between the cell site and a Mobile Telephone Switching Office which manages the automatic transfer of calls from cell to cell as a cellular customer travels within and without the service area, as well as managing the connection of calls to and from the local wireline telephone system or the long distance telephone network. Because multiple companies may be involved in providing service for a single call, it has proved especially difficult for the Board to identify which cellular telephone service supplier is required to collect and pay the surcharge.

It has been the Board's understanding that cellular telephone carriers nationwide entered into individual inter-carrier roamer service agreements for the purpose of providing cellular service

to the customers of other carriers when those customers required service in the geographic location served by a carrier other than the carrier with which the customer contracted for service. (For ease of reference, the carrier with which the customer has contracted for service will be referred to the "home carrier" and the carrier that provides service outside the customer's home service area will be referred to as the "host carrier".) In these circumstances, the Board presumed that the home carrier would be the "billing agent" for charges incurred by the home carrier's customer in the host carrier's service area. Charges incurred outside the home carrier's service area are referred to as "roamer" charges. The roamer charges are referred to as "roamer in-collect" from the perspective of the home carrier and as "roamer out-collect" from the perspective of the host carrier. An example of roamer in-collect versus roamer out-collect is as follows:

Example. The customer of a Sacramento cellular company (the home carrier) uses cellular services while visiting Los Angeles. The Los Angeles cellular company (the host carrier) which provided the service bills the amount of all roamer charges (including state and local taxes) to the home carrier. The amounts received by the host carrier from the home carrier are *roamer out-collect revenues* from the perspective of the host carrier. Charges for the services provided in the host carrier's area are included on the bill sent by the home carrier to its customer. The home carrier treats the amounts received from its own customer as *roamer in-collect revenues*.

B. Requirement That Surcharge Be Collected By Home Carrier on Roamer In-Collect Revenues--1991 Notice to Taxpayers. On June 5, 1991, prior to adoption of Regulation 2406 the Board issued a "Notice to Emergency Telephone Users Surcharge Taxpayers" to advise that the service supplier that physically furnishes the bill to the service user is required to collect and pay the surcharge. This Notice which took effect July 1, 1991 was based on the Board's then interpretation of Revenue and Taxation Code Section 41021. The effect of this interpretation, in the case of cellular roamer charges, was that the *home carrier was required to collect the surcharge on roamer in-collect revenues*.

C. Requirement That Surcharge Be Collected By Host Carrier on Roamer Out-Collect Revenues---Current Board Position. In 1996, the Board approved a change in the prior interpretation requiring that the service supplier that physically furnishes the bill to the service user collect the surcharge. Instead, the Board recognized a distinction between a service supplier acting in the capacity of billing agent for another service supplier, and a service supplier acting on its own behalf in sending a bill to its customers, and decided that when a service supplier is acting in the capacity of billing agent, the service supplier is not responsible for collecting the surcharge under Section 41021. Under the new interpretation and pursuant to Section 41021 and Regulations 2401 and 2406, the *Board continues to presume that the home carrier is acting only as the "billing agent" of the host carrier, and that the host carrier that actually provides the service is responsible to collect and remit the surcharge to the Board.*

Mr. Monte Williams

June 3, 1998

Page 4

IV. Conclusion. Because of the unique organization of the cellular industry and the level of cooperation required among cellular carriers in various geographic locations, and based on the need for uniformity in procedure to ensure collection of the surcharge, I conclude that the Board should proceed to implement Regulation 2406 assuming that in cellular roamer situations, the host carrier is the service supplier liable to collect the surcharge on California intrastate roamer out-collect revenues.

At the same time, Mr. \_\_\_\_\_ has raised an interesting question regarding billing agents/resellers that was not contemplated at the time Regulation 2406 was adopted. In order to properly and completely address the situation described by Mr. \_\_\_\_\_ in his letter, I recommend that the Board prepare a regulation which specifically defines and identifies the service supplier that is responsible to collect the 911 Surcharge in cellular roamer situations.

MJN:es

cc: Mr. Bill Kimsey, MIC:56  
Mr. Al Michel, MIC:56  
Ms. Janet Vining



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA

(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

TELEPHONE (916) XXX-XXXX

FAX (916) XXX-XXXX

JOHAN KLEHS  
First District, Hayward

DEAN F. ANDAL  
Second District, Stockton

ERNEST J. DRONENBURG, JR.  
Third District, San Diego

KATHLEEN CONNELL  
Controller, Sacramento

JOHN CHIANG  
Acting Member  
Fourth District, Los Angeles

E. L. SORENSEN, JR.  
Executive Director

DRAFT

Mr. \_\_\_\_\_ Esq.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Re: 911 Surcharge--Regulations 2401 and 2406

Dear Mr. \_\_\_\_\_:

This is in response to your letter dated \_\_\_\_\_ which was received in my office on February 18, 1998. In your letter you inquired how Regulation 2406 and the Board's audit procedures will be applied if a home carrier is acting as a *reseller* of a host carrier's services instead of acting as a *billing agent* for the host carrier. For the reasons stated below, the Board will continue to require cellular carriers to collect the 911 Surcharge on intrastate out-collect roamer revenue from the "effective date" of Regulation 2406.<sup>1</sup> Therefore, on and after February 1, 1998, cellular carriers must collect the 911 Surcharge based on roamer out-collect revenue.

The rationale for this approach is the Board's presumption that as between cellular telephone carriers the home carrier acts as the *billing agent* for charges incurred by the home carrier's customer in the host carrier's service area.

In your letter you describe a different situation where it appears that the home carrier may not act as a *billing agent* but rather seems to act as a *reseller* of the host carrier's services. From the brief description of the relationship between home and host carriers contained in your letter, the precise nature of such arrangements is not entirely clear. However, Regulation 2406 was adopted at a time when the Board presumed the home carrier to be acting as billing agent for the host carrier in the context of cellular roamer charges. It is on the basis of this presumption and with the goal of

<sup>1</sup> Regulation 2406 was adopted April 1, 1997 and became effective October 1, 1997. However for purposes of compliance with the changed billing procedures imposed on cellular carriers, at the request of those carriers, the Board expressly extended the date by which the cellular companies must switch their 911 reporting from roamer in-collect revenue to roamer out-collect revenue to January 1, 1998. Subsequently, a further extension to February 1, 1998 was granted informally.

Mr. [redacted]

Page 2

facilitating collection of the 911 Surcharge in a manner which is uniform, clearly articulated, and easily understood that the Board intends to proceed. Therefore, the Board will hold the host carrier responsible to collect the 911 Surcharge based on roamer out-collect revenues and to remit those amounts to the Board.

At the same time, the Board recognizes that the telecommunications field is rapidly changing and welcomes your further input so that we can understand those changes and make adjustments in our interpretations and procedures to properly apply the law and regulations to the changing practices in the industry. Thank you for bringing these issues to our attention. Please feel free to contact me or my staff to discuss this matter further if you have any questions or comments.

Sincerely,

Monte Williams  
Chief, Excise Taxes Division

cc: Mr. Bill Kimsey  
Mr. Al Michel  
Ms Janet Vining